

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

(Cotati, California)

SANTA ROSA RECYCLING & COLLECTION, INC., A
SUBSIDIARY OF NORTH BAY CORPORATION 1/

Employer

and

OPERATING ENGINEERS LOCAL UNION
NO. 3, INTERNATIONAL UNION OF OPERATING ENGINEERS,

Petitioner

20-RC-17859

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 2/
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer. 3/
4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act for the following reasons: 4/

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, 1099-14th Street, NW, Washington, DC 20570-0001**. This request must be received by the Board in Washington by June 23, 2003.

Dated June 9, 2003

at San Francisco, California

/s/ Robert H. Miller
Regional Director, Region 20

- 1/ The parties stipulated that the correct name of the Employer is Santa Rosa Recycling & Collection, Inc. However, as the record reflects that the Employer is a subsidiary of North Bay Corporation, the Employer's name appears in accordance with the record.
- 2/ After the close of the hearing, the parties entered into a written stipulation with regard to the Board's jurisdiction over the Employer and stipulated to the inclusion of that stipulation in the record as Board Exhibit 2. In accord with the parties' stipulation, I hereby include Board Exhibit 2 in the record.
- 3/ The parties stipulated, and I find, that the Employer is a California corporation, with an office and place of business in Cotati, California, where it is engaged in the business of refuse collection and recycling for residential and commercial customers. The Employer began its business operations on February 1, 2003. Since that date, the Employer has derived gross revenues in excess of \$500,000 from retail customers and received products, goods and materials valued in excess of \$5,000 directly from points outside the State of California. Based on the parties' stipulation to such facts, I find that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the purposes and policies of the Act to assert jurisdiction in this case.
- 4/ The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act.
- 5/ The parties stipulated, and I find, that there is no contract bar to this proceeding.

The Petitioner seeks to represent a unit comprised of all full-time and regular part-time trash collection employees, drivers, mechanics, recycle employees and all other production and maintenance employees employed by the Employer at its Cotati, California, facility; excluding all sales personnel, managerial employees, office and clerical employees, professional employees, guards and supervisors as defined in the Act.

The Employer contends that the petitioned-for unit is inappropriate and that the only appropriate unit includes approximately 275 employees employed by thirteen refuse and recycling companies that comprise a family business in Northern California. This family business is operated under two corporations with a number of subsidiary corporations in different localities. The two parent corporations are called the Ratto Group Corporation (herein the Ratto Group) and North Bay Corporation (herein North Bay). James and Deana Ratto are the owners of North Bay and James Ratto controls the trust that owns the Ratto Group. He also is the chairman of both North Bay and the Ratto Group.

North Bay is the parent company of the Employer, and two other corporations, Novato Disposal and Rohnert Park Disposal. The Ratto Group companies include Tam Valley Recycling, Solid Waste Systems of Ukiah, Timberline Disposal, Sunrise Disposal (herein called Sunrise), Windsor Refuse and Recycling (herein called Windsor Refuse), Pacific Coast Disposal, West Sonoma County Transfer Station, (herein called WSCT), West Sonoma County Disposal (herein called WSCD), Timber Cove Recycling (herein called Timber Cove), Fairfax Refuse and Recycling (Fairfax Refuse), Total Waste Systems of Mariposa (Total Waste Systems), Reward Leasing, North Bay Total Resource Recovery and North Bay Portables.

The Employer does not contend that employees of Fairfax Refuse, Total Waste Systems and Reward Leasing must be included in the unit. In this regard, the record reflects that Fairfax Refuse, which operates out of the Employer's Petaluma facility, has a collective-bargaining agreement with International Brotherhood of Teamsters Local 624, AFL-CIO (herein Teamsters Local 624), covering its drivers and drivers' helpers. Total Waste Systems operates out of Mariposa and is engaged in the business of trash collection and recycling and landfill operations and has about 20 employees. The Employer takes the position that the employees of Total Waste Systems do not have sufficient interchange with the employees at other companies to support their inclusion in the unit. Reward Leasing has no employees.

The operations of the Ratto Group were described in detail in the Decision on Review and Order issued by the Board in *Novato Disposal Services, Inc.*, 328

NLRB 820 (1999) and a Decision on Review and Order (on appeal after remand) in the same case at 330 NLRB 632 (February 10, 2000). In *Novato Disposal Services, Inc.*, 328 NLRB 820, the Board reversed a finding that the petitioned-for unit of drivers and helpers working at the Ratto Group's Petaluma facility was an appropriate unit for bargaining and ruled that the employer had rebutted the presumption that the petitioned-for single-facility unit was appropriate. The Board remanded that matter to the undersigned to determine the appropriate unit. In the Supplemental Decision and Direction of Election it was determined that the appropriate unit should include drivers, drivers' helpers, recycle laborers, bailers, buy-back attendants and mechanics employed at eight unorganized Ratto Group companies: Novato Disposal Service, Inc., Sunrise Garbage Service, Windsor Refuse and Recycling, Pacific Coast Disposal, West Sonoma County Transfer, West Sonoma County Disposal, Timber Cove Recycling and Total Waste Systems, Inc. In its Decision on Review and Order, dated February 10, 2000, the Board ruled that the mechanics should be excluded from the unit.

Changes In the Operations of the Ratto Group and North Bay Since Issuance of the Board's *Novato Disposal Services* Decisions.

Based on the record evidence in this proceeding, it appears that the operations and the workforce of the Ratto Group have changed substantially since the Board issued its decisions in *Novato Disposal Services*. The unit the Employer urges as appropriate unit in the instant case consists of approximately 275 employees employed thirteen North Bay and Ratto Group companies. The current employee breakdown is as follows: Santa Rosa Recycling- approximately 50 employees, including drivers, mechanics, sales employees and clerical employees; Novato Disposal —42 employees, including drivers, mechanics, buy-back center attendants, clerical employees and utility/yard helpers; Rohnert Park Disposal- 10 employees, including drivers, mechanics and clerical employees; Tam Valley Recycling- one employee whose job is not identified in the record; West Sonoma County Disposal- 20 employees, including drivers, mechanics and clerical employees; Solid Waste Systems- 12 employees, including drivers, mechanics, buy-back attendants, transfer station attendants, gate house keepers and clerical employees; Timberline Disposal- 20 employees, including drivers, mechanics, yard helpers, buy-back attendants and clerical employees; Sunrise Disposal- 8 employees, including drivers, mechanics and clerical employees; Timber Cove

Recycling-50 employees, including drivers, equipment operators, sorters, buy-back attendants and mechanics; Total Waste Systems-3 drivers; North Bay Total Resource & Recovery-6 employees, including drivers, sorters and equipment operators; North Bay Portables-4 employees, including drivers and sales employees and; West Sonoma County Transfer-24 employees, including drivers, transfer station attendants and equipment operators, including four at Sonoma Transfer Station who direct traffic, operate equipment and sort material not accepted at the landfill; one driver at Central Landfill; one driver at Occidental Transfer Station; one employee at Guerneville Transfer Station who directs traffic, operates equipment and separates materials; four employees at Healdsburg who direct traffic, operate equipment and sort non-recyclable materials; and one driver at Annapolis Transfer Station who does the same type of work as is performed at the Healdsburg and Guerneville stations. In addition, there are 13 drivers of West Sonoma County Transfer who drive between the transfer stations. The record also shows that the Ratto Group now includes a corporation called Reward Leasing which has no employees and which leases trucks and other equipment to the Ratto Group and North Bay companies.

The operations of North Bay also appear to have changed substantially since issuance of the Board's *Novato Disposal Services* decision. In those decisions, North Bay is described as a corporation owned by the Ratto Group that leases trucks and other equipment to all of the Ratto Group companies. However, in the instant case, the record describes North Bay as the parent corporation for the Employer, Novato Disposal and Rohnert Park Disposal.

Another change in the operations of North Bay and the Ratto Group is the fact that several companies, including the Employer, Rohnert Park Disposal, Timberline Disposal, Tam Valley Recycling, North Bay Total Resource Recovery, North Bay Portables, and Solid Waste Systems, were not discussed in the prior cases. Thus, the record reflects that the Employer and Rohnert Park Disposal came into existence after the issuance of the Board's decisions in *Novato Disposal Services*, but does not disclose when the other companies came into existence. The Employer began operating on February 1, 2003.

Rohnert Park Disposal, a North Bay subsidiary, began operating in 2001, and is engaged in the collection and recycling of refuse for the City of Rohnert Park. As indicated above, it

has ten employees, including drivers and a mechanic and clerical employees who report to the Employer's Santa Rosa facility.

Timberline Disposal, a Ratto Group corporation, is engaged in the business of refuse and recycling collection, operating a buy-back center and a drop off center. As indicated above, it employs 20 employees, including drivers, mechanics, yard helpers, buy-back attendants and clerical employees who report to its facility at Lakeport, California.

Tam Valley Recycling, a Ratto Group corporation, is engaged in the business of recycling and employs one employee who reports to the Employer's Santa Rosa facility.

North Bay Total Resource and Recovery, a Ratto Group corporation, is engaged in the processing of construction and demolition debris and in transporting processed materials. It employs six employees, including drivers, sorters and equipment operators. The employees work out of the Central Landfill, which is located in Sonoma County.

North Bay Portables, a Ratto Group corporation, is engaged in the business of renting and servicing portable toilets, temporary fencing and temporary offices. It has four employees, including a driver and sales employees, who work out of the Employer's Santa Rosa and Petaluma facilities.

Solid Waste Systems of Ukiah, a Ratto Group corporation, is engaged in the collection of refuse and recycling and operating a buy-back center and transfer station in Ukiah, California. It has twelve employees, including drivers, mechanics, buy-back attendants, transfer station attendants, gate house keepers, and a clerical employees.

While the above-described operations were not discussed in the prior Board decisions, other operations that were discussed in those decisions have since left the Ratto Group. San Anselmo Refuse and Recycling has not been part of the Ratto Group since November 30, 2002, and the Ratto Group no longer maintains a buy-back facility at Gualala,

California, as described at 328 NLRB at 820-821. However, noted above, it does operate a buy-back facility at Solid Waste Systems of Ukiah.

Geographic Locations of the Companies Comprising the Ratto Group and North Bay.

Employees of the following companies report to the Employer's Cotati facility: the Employer and Timbercove Recycling.

Employees of the following companies report to the Santa Rosa, facility of North Bay and the Ratto Group: Rohnert Park Disposal, Tam Valley Recycling, West Sonoma County Disposal, Sunrise Disposal, Timber Cove Recycling, Total Waste Systems, North Bay Portables, Pacific Coast Disposal and West Sonoma County Transfer, the latter of which includes Sonoma Transfer Station, Occidental Transfer Station, the Central Landfill/Transfer Station, Guerneville Transfer Station, Healdsburg Transfer Station and Annapolis Transfer Station.

Employees of the following companies report to the Petaluma facility of North Bay and the Ratto Group: Fairfax Refuse, Timbercove Recycling, Novato Disposal, and North Bay Portables. As indicated above, the Timbercove Recycling employees report to multiple locations, including the Santa Rosa, Cotati and Petaluma facilities of North Bay and the Ratto Group. The North Bay Portable employees also report to multiple locations, including North Bay and the Ratto Group's Santa Rosa and Petaluma facilities.

Solid Waste Systems of Ukiah employees report to the Ukiah facility of North Bay and the Ratto Group; Timberline Disposal employees report to the Lakeport facility of North Bay and the Ratto Group; and North Pay Total Resource & Recovery employees report to the Central Landfill located in Sonoma County.

The Employer's Cotati facility is located about five miles from the Santa Rosa facility and approximately 10 to 12 miles from the Petaluma yard. It is about 55 miles from the Ukiah facility; 20 to 25 miles from the Healdsburg transfer station; about 15 to 20 miles from the Guerneville Transfer Station; about 65 miles from Annapolis; and about 20 miles from the Central Landfill.

The Employer's Operations. The Employer began operation on February 1, 2003, when the Employer assumed the disposal and recycling contract for the City of Santa Rosa. The Employer is located at Cotati and it employs approximately fifty-five employees, including drivers, mechanics, sales employees and clerical employees. About forty-five of these employees were drivers who were hired by the Employer from the former company that had the waste/recycle contract with the City of Santa Rosa. An additional six to eight drivers were permanently transferred from other companies of Ratto Group and/or Northern Bay to work for the Employer. Pursuant to its contract with the City of Santa Rosa, the Employer collects refuse and recycle materials within the city limits of Santa Rosa. It operates twenty hours a day, six days a week, Monday through Saturday. Another eight or ten employees who work for other North Bay and/or Ratto Group companies work at the Cotati facility but are not on the Employer's payroll. The other employees of the Employer are six mechanics, including two apprentice mechanics and one lead mechanic, one yard helper, one sales employee and nine clerical employees.

The Timber Cove Recycling Employees Who Work at Cotati. Timber Cove employs about fifty employees who work at the Santa Rosa, Cotati and Petaluma facilities. Ten of these employees work at the Employer's Cotati facility. They include drivers, equipment operators, sorters, buy-back attendants and mechanics. These employees process recyclables, operate a buy-back center and haul materials from processing facilities to market.

Management and Supervision. As noted above, James and Deana Ratto own North Bay and James Ratto controls the trust which owns the Ratto Group. He is also the chairman of North Bay and the Ratto Group. Rick Powell is the president of all North Bay and Ratto Group companies. The record reflects that all decisions involving employee hiring, discipline, termination, promotion, pay increases and permanent transfers for all Ratto Group and North Bay companies are made by James Ratto and/or by Rick Powell. Ratto and Powell split their time among all of the North Bay and Ratto Group companies and they are directly involved in the day-to-day operation of all companies. James Ratto does not have an office at any facility; Powell has offices at the Santa Rosa and Cotati facilities. Powell testified that he, James Ratto, Jim Salyers, Vice President of Solid Waste Systems

of Ukiah, Louis Ratto and Bruce McCracken, the manager of Timberline Disposal are the only supervisors at the Employer's facility.

James Ratto, his son Steve Ratto and Rick Powell are involved in the work assignments and daily dispatching decisions for all North Bay and Ratto Group companies. Documents showing the work to be performed the following day are faxed to the homes of Ratto and Powell each evening as well as to Powell's office, so that they can review the work for the next day and make the work assignments. James Ratto typically dispatches drivers from the Santa Rosa facility three to four days per week and less frequently at the Cotati facility. Powell testified that he spends about twenty-five percent of his time at the Cotati facility and is generally present at the facility each morning, including Saturday, to oversee the dispatching of drivers.

Jim Salyers is the Vice President of Solid Waste Systems of Ukiah. His office is at the Petaluma facility and he spends about five percent of his time at the Cotati facility. Bruce McCracken is a manager of Timberline Disposal and his office is located at the Santa Rosa facility. He spends about five percent of his time at the Cotati facility. Steve Ratto also spends about five percent of his time at the Cotati facility. The record does not show specifically what personnel matters or decisions Salyers, McCracken and Steve Ratto have been involved in at that facility.

Leadmen. The record shows that there are two lead drivers and one lead mechanic at the Cotati facility. The two lead drivers are Arturo Morales and Jose Castillo. Both have the same duties and level of authority. Morales and Castillo dispatch and route drivers on a daily basis. However, Powell testified that he directs Morales and Castillo in the assigning of drivers to the various routes.

Powell testified that he has informed the employees at the Cotati facility that they are to take their directions from Morales and/or Castillo. According to Powell, the lead drivers have no authority to give oral warnings to drivers but must notify Powell if employees fail to follow their directions. Drivers must also notify Morales and/or Castillo if they are going to work overtime assisting other employees. In this regard, Powell testified that drivers can work overtime without prior authorization but doing so may result in the lowering of their

bonuses, which are based on their completion of their route within 48 hours. Time spent assisting other employees is not counted in this 48-hour equation so drivers must notify the lead drivers in order to have time spent helping other workers discounted. According to Powell, their failure to do so can result in their bonuses being lowered. Powell testified that the lead drivers report driver misconduct to him and/or to James Ratto without making a recommendation. They also report missed collection pick-ups by drivers and accidents, but they make no recommendations regarding such matters. According to Powell, it is Ratto and/or Powell who decide what action to take if a driver engages in misconduct or has an excessive number of missed pick-ups.

Employees notify the lead drivers if they are going to be absent and obtain approval for time off from them. The lead drivers also approve timecard corrections. Powell and/or Ratto and the lead drivers jointly decide who will substitute for an absent driver.

The lead drivers handle refuse collection for customers whose garbage and/or recycle cans were missed by the regular drivers. They may also assign such work to other drivers to handle. Occasionally, Morales and Castillo drive regular routes for absent drivers. Morales begins work at 3 a.m. and Castillo begins work at 5 a.m. each day. They each spend about 80% of their time driving and 20% routing other drivers. Both are salaried and on the payroll for the Ratto Group. Morales earns \$60,000 a year and Castillo earns approximately \$64,000 a year. As indicated above, the other drivers receive an hourly wage at a rate of \$9 to \$22 an hour. In addition, they receive bonuses and overtime pay.

John Roy is the lead mechanic at the Cotati facility. He is involved in interviewing mechanics for hire and Powell testified that he relies on Roy's recommendations. The record reflects that Roy is salaried.

In addition to Morales and Castillo, the Employer has lead drivers at its other facilities who sometimes work at the Cotati facility. These include Scott Pariani who is employed by West Sonoma County Recycling and works at the Cotati facility about 15% of the time; and Mike Lockwood is employed by Pacific Coast Disposal and works at both the Cotati and Santa Rosa facilities.

Employee Interchange and Contact. Powell testified that about 60% of the employees of the Ratto Group and North Bay companies have been employed by more than one of these companies.

With regard to the Cotati facility, the record reflects that approximately eight employees were permanently transferred to the Employer from other North Bay and/or Ratto Group companies when the Employer began operating in February 2003. In addition to these employees, about ten employees of Timber Cove Recycling also work at the Cotati facility.

With regard to temporary interchange, Powell testified that the Ratto Group and North Bay companies frequently transfer employees among the various companies on a temporary basis in order to substitute for employees who are absent or on vacation or if there is a heavy workload at one location. Although the Employer had been in business for only about three months at the time of the hearing, the record shows that several of its employees had been transferred to other North Bay and Ratto Group companies on a temporary basis.

The Employer introduced excerpts from its payroll records for the period March 9 to April 5, 2003, showing the temporary interchange of employees among the various North Bay and Ratto Group companies and records showing when drivers had delivered bins to areas within the geographic areas covered by companies other than their own employers. Powell testified that these records reflected the usual rate of interchange among the various facilities. He noted however, that the employees at the Cotati facility had not been transferred to other facilities to the same extent as employees from other the companies because the Employer had just begun operating in February 2003, and the drivers that the Employer hired from the predecessor to the Santa Rosa City contract were more familiar with the routes and customers than were drivers from other companies. Powell also noted that the Employer's drivers would be transferred to the same extent as drivers of other companies in the future.

In considering the Employer's evidence, I have discounted the instances when Timber Cove employees are shown to work at the Employer's facility because, as Powell testified, they

are assigned to that facility and the payroll records show that they are being paid by Timber Cove in almost all instances. I have also discounted the evidence of interchange of salaried leadmen for purposes of my consideration as I find at least two of them to be statutory supervisors. Lastly, my focus is specifically on the interchange involving the petitioned-for facility, as that is the proper starting place for the Board's inquiry into whether the petitioned-for unit is an appropriate unit.

With the above considerations in mind, the payroll records introduced at the hearing reflect that the following North Bay and Ratto Group company employees have worked for the Employer on a temporary basis during the period March 9 to April 5, 2003: Rohnert Park employees Moises Guel Padilla, Raymond Padilla, Francisco Arroyo and Sergio Hercules; Novato Disposal employees Carlos Membreno and Duane Scott; West Sonoma County Disposal employees Javier Sanchez and David Cargile; Pacific Coast Disposal employee Ed Harp; and Windsor Refuse and Recycle employee Jose Iberra. The payroll records further reflect that the following employees of the Employer have worked for other North Bay and Ratto Group companies on a temporary basis during this period: Jose Chavez worked for Novato Disposal; Martin Salgado worked for Timber Cove, West Sonoma County Disposal and West Sonoma Transfer; and Marcos Guerrero worked for West Sonoma Transfer.

The Employer also introduced evidence showing that on several occasions, drivers had delivered or picked up debris boxes located in the geographic area of companies other than their employer. This includes instances when a West Sonoma County Disposal employee delivered debris boxes in the Employer's geographic area and instances when the Employer's drivers had delivered or picked up debris boxes in the geographic area covered by other companies. Powell testified that drivers Mark Gardner and Monty Schuster had picked up or delivered debris boxes for Rohnert Park Disposal. Powell also testified that Santa Rosa drivers had hauled recycle boxes from the Cotati yard to the Santa Rosa facility for processing on behalf of Timber Cove.

Similar Work. Drivers from the Ratto Group and North Bay companies perform similar work, including residential and commercial trash collection; hauling debris boxes to landfills and to yards for sorting and hauling recycled materials from the yards to market for sale of

recyclable materials. The record shows that the Employer's drivers spend most of their time running residential routes within the city limits of Santa Rosa. The mechanics at the Employer's location also repair and maintain the Employer's vehicles and equipment, as do the mechanics working at its other facilities. The Employer's mechanics are apparently actually employed by the Ratto Group and are paid a salary as are the mechanics working at other locations. The mechanics at Cotati also work on vehicles from other locations and may work on such vehicles at other facilities or at geographic locations outside the geographic area covered by the Employer.

Equipment. All of the equipment used by employees of North Bay and Ratto Group companies is leased from Reward Leasing and/or North Bay. None of the trash pick up companies own their own equipment. There are no distinctive colors or designs on equipment used by different companies. All of the equipment used by all of the Ratto Group and North Bay companies is green and white. Vehicles and equipment have signs bearing the name of the company that the equipment is primarily used by. For the Employer herein, it is "North Bay Santa Rosa Recycling and Collection." Equipment is shared among the various companies as needed if there are breakdowns or additional work. However, the record does not show the extent of such sharing.

Payroll, Personnel and Other Records. Payroll records for all North Bay and Ratto Groups companies are kept at the Petaluma facility. The payroll for all Ratto Group and North Bay companies is prepared by the same individual who is employed by West Sonoma County Disposal. All paychecks are signed by either James Ratto or Powell. Separate payroll and budget records are maintained for each company and if an employee performs work for a company other than his employer, the payroll records show an allocation of the hours worked to the company that the employee has worked for. The personnel records all Ratto Group and North Bay companies' employees are maintained at the Employer's Petaluma facility. All drug and alcohol records are kept at the Santa Rosa facility. All Department of Transportation records are also maintained at the same location.

The record reflects that none of the Ratto Group and North Bay companies, including the Employer, has an employee manual or a written wage scale.

Work Hours. While the start times for employees at the Ratto Group and North Bay companies are staggered, they basically they work similar schedules. Thus, employees at all of the companies start work between 3 a.m. and 6 a.m. Most employees regularly work shifts in excess of eight hours. The earliest shift of the Employer begins at 3 a.m. and the last shift ends at 7 p.m.

Time clock. All hourly employees punch a time clock at their respective facilities, except for the employees who work at transfer stations and at North Bay Total Resource Recovery.

Training. Employees receive the same training at all facilities. Timberline Disposal Manager Bruce McCracken conducts the safety training at the Employer's facility and the facilities of other North Bay and Ratto Group companies.

Pay Rates. The pay rates for drivers range from a low of \$9 an hour to a high of approximately \$22 an hour for drivers at Santa Rosa as well as for drivers employed at other North Bay and Ratto Group companies. Mechanics at all companies earn between \$8 and \$30 an hour. The record reflects that the differences in pay between employees at the various North Bay and Ratto Group companies are determined by the length of service the employee has working for James Ratto rather than by the length of service at an individual company.

Similar Fringe Benefits. Powell negotiates the contract for health benefits for all Ratto Group and North Bay companies each year. Employees at all North Bay and Ratto Group companies have the same number of sick days off, although some employees may be required to work on a holiday because of the landfill schedule in a particular area. In such cases, employees are paid for the holiday. All Ratto Group and North Bay companies' employees basically have the same health insurance except that employees in certain areas do not have Kaiser available to them as a health provider choice like drivers in other areas because there are no Kaiser facilities in their areas. The drivers do, however, have differing bonus plans. The plans range at different facilities from a high each week of \$55 to \$300. The Employer's bonus plan has a maximum of \$200 a week and there is no other facility that has exactly the same bonus plan as the Employer.

Similar Uniforms. Except for clerical employees and supervisors, employees at all Ratto Group and North Bay companies wear similar uniforms, consisting of gray pants and a green shirt. The Employer's employees wear a shirt bearing the North Bay logo. The only exceptions are mechanics who wear coveralls and the Timber Cove sorters to whom the Ratto Group does not supply uniforms because of the high turnover rate.

Analysis. As indicated above, the Petitioner seeks to represent a unit of drivers, mechanics and other production employees that is limited to the Employer's Cotati facility. The Employer contends that to be appropriate, the unit must include the employees in the same classifications at all of the Ratto Group and North Bay companies' facilities except Fairfax Refuse, Total Waste Systems and Reward Leasing.

Section 9(b) of the Act provides that the Board "shall decide in each case whether . . . the unit appropriate for the purposes of collective-bargaining shall be the employer unit, craft unit, plant unit, or a subdivision thereof." In deciding the appropriate unit, the Board first considers the union's petition and whether that unit is appropriate." *P.J. Dick Contracting*, 290 NLRB 150, 151 (1988). The Board does not compel a petitioner to seek any particular appropriate unit. As the Board stated in *Overnite Transportation*, 322 NLRB 723 (1996), "The Board's declared policy is to consider only whether the unit requested is an appropriate one, even though it may not be the optimum or most appropriate unit for collective-bargaining." As stated by the Board in *Morand Bros, Beverage Co.*, 91 NLRB 409, 418 (1950), enf'd on other grounds, 190 F.2d 576 (7th Cir. 1971):

There is nothing in the statute which requires that the unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit; the Act only requires that the unit be "appropriate."

“A union is, therefore, not required to request representation in the most comprehensive or largest unit of employees of an employer unless an appropriate unit compatible with that requested unit does not exist.” P. Ballantine & Sons, 141 NLRB 1103, 1107 (1963).

With regard to unit determinations made regarding employees at single versus multi-location units, the Board has long applied the principle that a single facility is presumptively appropriate unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. See Ohio Valley Supermarkets, Inc. d/b/a Foodland of Ravenswood, 323 NLRB 665, 666 (1997); J & L Plate, Inc., 310 NLRB 429 (1993); Penn Color, Inc., 249 NLRB 1117 (1980). The presumed appropriateness of a single-location unit is rebuttable but the burden is on the party opposing the appropriateness of the single-facility unit to present sufficient evidence to overcome the presumption. J & L Plate, supra; Red Lobster, 300 NLRB 908, 910-911 (1990). To determine whether the presumption has been rebutted, the Board examines a number of community of interest factors, including the central control over daily operations and labor relations, including the extent of local autonomy; the similarity of employee skills, functions and working conditions; the degree of employee interchange; the distance between locations; and bargaining history if any exists. See Ohio Valley Supermarkets, Inc. d/b/a Foodland of Ravenswood, supra, 323 NLRB at 666; J & L Plate, supra, at 429; citing Esco Corp., 298 NLRB 837, 839 (1990).

The record in the instant case shows that the North Bay and Ratto Group operations have grown substantially since the Board issued its decisions in Novato Disposal Services, Inc., in 1999 and 2000. As indicated above, there is no collective bargaining history at any of the facilities of the Ratto Group and North Bay, except at San Anselmo which is no longer part of their operation, and at Fairfax Refuse, which is located at their Petaluma facility.

With regard to the issue of central control over daily operations and labor relations, including the extent of local autonomy, the record supports a finding that the Ratto Group and North Bay are a highly centralized operation that is controlled at all locations by a few top managers/owners, including Powell and James Ratto, who are involved in the day-to-day operations of all companies, including the Employer's operation at Cotati. Thus, as indicated above, all decisions involving employee hiring, discipline, termination, promotion,

pay increases and permanent transfers for all of the Ratto Group and North Bay Companies, including the Employer, are made by James Ratto or by Powell.

The Petitioner has taken no position as to whether the lead drivers at the Employer's facility are statutory supervisors and the Employer takes the position that they are not supervisors under the Act. While the record supports the conclusion that the lead drivers are statutory supervisors based on their authority to direct employees and to grant time off, it is plain from the record that their authority is limited and that there is very little autonomy in decision-making concerning labor relations/personnel matters at the Employer's facility. As noted above, Powell and/or Ratto make all personnel decisions, and they oversee the lead drivers on a daily basis, even assigning work to employees and involving themselves in daily dispatching functions. In addition, the lead drivers employed by other of the Ratto Group and North Bay companies also apparently oversee the employees at Cotati. The record does not contain evidence sufficient to find Lead Mechanic John Roy to be a statutory supervisor.

While I find that there is separate supervision at the Employer's facility based on the supervisory status of the lead drivers, the record evidence demonstrates that control over labor relations and personnel decisions at all Ratto Group and North Bay companies is highly centralized and is in the hands of Powell and Ratto.

With regard to interchange among employees, as indicated above, the record reflects that several employees from other Ratto Group and/or North Bay companies have permanently transferred to the Employer's Cotati facility. With regard to temporary interchange, while the Employer only began operating in February 2003, several employees of its employees have been transferred on a temporary basis to work among various of the Ratto Group and North Bay companies and several employees from these companies have been transferred to work on a temporary basis for the Employer. In addition, it is noted that ten Timber Cove employees also work at the Cotati facility.

Further, the nature of the work performed and the pay rates and benefits received by the Employer's employees are substantially similar to those of employees at the other North Bay and Ratto Group companies. Payroll, human resources and record-keeping functions

for all Ratto Group and North Bay companies, including the Employer, are centralized. Drivers for all Ratto Group and North Bay companies use similar equipment; the companies share equipment on an as needed basis; and employees at all of the companies wear similar uniforms and work similar time schedules.

With regard to distances between the locations of the various companies, while the Employer's Cotati facility is geographically distant from certain Ratto Group and North Bay facilities, it is only five or six miles from the Santa Rosa facilities where employees of ten other North Bay and Ratto Group companies report.

Based on the foregoing community of interest factors, I find that the Employer has rebutted the presumption that the single facility unit petitioned-for herein is an appropriate unit. I reach this conclusion based on the evidence establishing the centralized control over daily operations, labor relations and personnel decisions in Powell and Ratto, and the resulting lack of local autonomy at the Cotati facility. As noted above, while the lead drivers at Cotati may have nominal authority over time off sufficient to warrant a finding that they are statutory supervisors, their authority is so limited and the oversight that Powell and Ratto exercise over them is so close, that I am compelled to find that their status as supervisors under the Act does not make the Cotati facility a locally autonomous unit for collective bargaining purposes. Further, given the short term of the Employer's operation, I find that there is significant evidence of interchange between the Employer and other North Bay and Ratto Group companies. In addition, I find that there is a similarity of work, pay and benefits between the Employer and the other North Bay and Ratto Group companies. In these circumstances, I find that the Employer has overcome the presumption that the single facility unit petitioned-for herein is an appropriate unit and that the single location unit petitioned-for herein is not an appropriate unit for collective bargaining purposes.

I decline, however, to make a finding regarding what alternative unit would be appropriate in the instant case for several reasons. At the outset, I note that no petition for an alternative unit is pending before me and the Petitioner has not expressed a willingness to proceed to an election in any unit other than that petitioned for. The unit that the Employer contends is the appropriate unit is much larger than the petitioned-for unit. The petitioned-for unit is limited to a single facility and consists of about 50 employees; the unit that the Employer

contends is the appropriate unit includes approximately 275 employees at numerous facilities that extend over a large geographic area of Northern California. Further, since the issuance of the decisions in *Novato Disposal*, in which an overall unit involving the Ratto Group companies was found to be the appropriate unit, there has been a substantial change and growth in the operations of the Ratto Group and North Bay such that I do not find that case of controlling in finding the same overall unit appropriate in this case. Moreover, the record in this case is insufficient to support an alternative unit finding. In this regard, I note that the evidence is sparse with regard to the actual level of supervisory authority and local autonomy at facilities other than the petitioned-for facility and with regard to whether the interchange of employees could support alternative combinations of facilities when considered along with the other community of interest factors. Given the foregoing considerations, I have concluded that a finding that a particular unit is the appropriate unit is not supported by the record.

Accordingly, I am dismissing the petition herein and I will consider the issue of what constitutes an appropriate unit if and when the issue is presented upon the filing of a new petition. *Metropolitan Opera Association, Inc.*, 327 NLRB 740 (1999); *Purolator Courier Corp.*, 266 NLRB 384 (1983); *American Broadcasting Co.*, 210 NLRB 654 (1974); *The Wackenhut Corp.*, 213 NLRB 293 (1974).

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